IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

O R D E R

Dhanraj Vs. State of Raj. & Ors.
S.B. CR. REVISION PETITION NO.243/2006

Against order dated 18.03.2006 passed by learned Sessions Judge, Bali, Camp Sumerpur, District Pali n Sessions Case No.142/2002.

DATE OF ORDER :: 28th August, 2006.

PRESENT

HON'BLE MR.JUSTICE SATYA PRAKASH PATHAK

Mr. Mridul Jain for petitioner.
Mr. Vishnu Kachhawaha, Public Prosecutor.
Mr. Suresh Kumbhat for non-petitioner-respondent.

BY THE COURT:

By this petition, a challenge has been made to an order dated 18.03.2006 passed by learned Sessions Judge, Bali, Camp Sumerpur, District Pali in Sessions Case No.142/2002, whereby the learned trial Judge has rejected the application moved by the complainant under Sec.319 of the Cr.P.C. for adding the additional accused to face trial.

Heard learned counsel for the petitioner and carefully examined the material available on record.

The contention of learned counsel for the petitioner is that in the instant case earlier a revision petition being S.B. Criminal Revision Petition No.431/2005 was filed and this Court while dismissing the revision petition ordered that the petitioner shall be free to move fresh application under Section 319 Cr.P.C. after statements of Meetha Ji, Genaji, Bhabhutaji and Kishan Lal are recorded by the trial court. According to learned counsel, out of above four, two witnesses have been left by the prosecution and two have been examined and after examination of two witnesses namely Meetha Ji and Genaji, application under Section 319 Cr.P.C. was moved and that application has been rejected by the learned Additional Sessions Judge, Bali Camp Sumerpur, District Pali vide order dated 18.03.2006 for the reason that firstly two witnesses have been left by the prosecution and they have been left because on producing them as witnesses in the Court they would not have supported the prosecution case

and secondly the material available on record, the learned trial court reached to the conclusion that there was no satisfactory evidence available on record to summon the accused to face trial. The contention of learned counsel for the petitioner is that the trial court has miserably failed to appreciate the evidence available on record in its correct prospective and further failed to appreciate the legal position in relation to taking cognizance on an application moved under Section 319 Cr.P.C. It has also been submitted that in the evidence produced after the decision of the Revision Petition there was sufficient evidence to take cognizance against the persons named in the application moved under Section 319 Cr.P.C. but the learned trial court did not consider the evidence in its correct prospective.

On the other hand, it has been submitted that in the instant case after the order passed by this Court in S.B. Criminal Revision Petition No.431/2005, only two witnesses have been examined and from their statements, prima facie, it appears that the persons named in the application as accused are not responsible for the alleged crime, therefore, the learned trial court has committed no illegality

in not taking cognizance under Section 319 CP.C. against the persons named in the application. It has also been submitted that the learned trial court has rightly passed the impugned order under Section 319 Cr.P.C. finding that satisfactory evidence was not available on record. It has also been contended that the two statements recorded by the court infact do not firmly state that the persons required to be summoned as an accused to face trial have something to do in relation to the crime. The learned counsel has taken me through the cross-examination of PW5 Mitalal and PW6 Ganaram and submitted that no worth reliable evidence has been brought on record to satisfy the requirement of law that while considering the matter relating to adding additional accused persons to face trial evidence brought on record should be of such a nature having prospect of ending in conviction.

I have considered the submissions made before me.

It is not in dispute that after investigation charge-sheet was filed only against the husband. It is also not disputed that on previous occasion the Revision Petition

was dismissed by the Court with the observation that after the statements of four witnesses recorded by the trial court petitioner shall be free to move application under Section 319 Cr.P.C. before the trial court. It appears that Meetha Ji and Genaji have been examined by the trial court and two persons have been left by the prosecution. It further appears that the learned trial court finding that in the initial version narrated by the witnesses the role played by the persons sought to be summoned as an additional accused was completely missing and the two witnesses have materially improved their version in the Court and was not reliable.

In State of Rajasthan Vs. Mangilal & Ors. [2002 (2) Cr.L.R. (Raj.) 839], this Court while considering the provisions of Sec.319 of Cr.P.C. observed that the Court is required to take into consideration the overall facts and circumstances of the case and if the Court comes to the conclusion that additional accused sought to be summoned under the provisions of Sec.319 of the Cr.P.C. have committed the offence and for that evidence is there, then they should be summoned for facing trial as additional

accused.

In the case of Hajari Ram Vs. State of Rajasthan [1999 Cr.L.R. (Raj.) 469], this Court after considering the evidence and material available on record observed that even on the basis of single statement recorded in Court satisfies the court prima facie the involvement of other persons in the alleged crime then application under Sec.319 of the Cr.P.C. could be allowed.

The Hon'ble Apex Court in 2006 (1) SCC (Cri.) 568 – Palanisamy Gounder & Anr. Vs. State represented by Inspector of Police, while considering the provisions of Sec.319 in Para 3 has observed as under:

> "The power under Sec.319 of the Code cannot be exercised so as to conduct a fishing inquiry. We have already noticed the observations of the learned trial Judge that though the case against the appellants was not on sound foundation but it was felt that to find out the real truth they deserved to be added as accused. The manner in which the power under Section 319 deserves to be exercised has been laid down in Michael Machado v. Central Bureau of Investigation [(2000) 3 SCC 262] holding that unless the Court is hopeful that there is a reasonable prospect of the case against the newly added accused ending in

> their conviction for the offence concerned, the Court shall refrain from adding them as accused.

In the case of Lok Ram Vs. Nihal Singh & Anr. (2006 Cr.L.R. (SC 414), the Hon'ble Apex Court has explained the scope of Sec.319 of the Cr.P.C. The Court has observed that 'the power under Sec.319 is discretionary and such discretion must be exercised judiciously having regard to the facts and circumstances of the case. Undisputedly, it is an extraordinary power which is conferred on the Court and should be used very sparingly and only if compelling reasons exists for taking action against a person against whom action had not been taken earlier. The word 'evidence' in Sec.319 contemplates that evidence of witness given in Court.'

In Michael Machado vs. Central Bureau of Investigation [2000 Cr.L.R. (SC) 215] it has been observed that 'the court may proceed against such person' under Section 319 CrPC. The Hon'ble Supreme Court held that the power is discretionary and should be exercised only to achieve criminal justice and that the court should not turn

against another person whenever it comes across evidence connecting that other person also with the offence. The Hon'ble Court further held that a judicial exercise is called for, keeping a conspectus of the case, including the stage at which the trial has already proceeded and the quantum of evidence collected till then, and also the amount of time which the court had spent for collecting such evidence. The court, while examining an application under Section 319 CrPC has also to bear in mind that there is no compelling duty on the court to proceed against other persons. In a nutshell, it means that for exercise of discretion under Section 319 CrPC, all relevant factors, including the one noticed above, have to be kept in view and an order is not required to be made mechanically merely on the ground that some evidence had come on record implicating the person sought to be added as an accused.'

Having carefully gone through the principles laid down by the Hon'ble Apex Court and the authorities referred to hereinabove, there remains no doubt that exercise of powers under Sec.319 of the Cr.P.C. are discretionary and extraordinary which are required to be exercised sparingly

and judiciously having regard to the facts of each case. The powers are not to be exercised in a mechanical way and the Court while exercising such powers should see that the evidence which has been taken into consideration is such which satisfies the Court that there is a reasonable prospects of the case against the newly added accused ending in their conviction for the offences concerned.

In view of above legal position, when the impugned order is gone through, it appears that the trial Court after having discussed the evidence, prima facie, was not satisfied that the application moved under Sec.319 of the Cr.P.C. was required to be accepted, therefore, rejected the same after giving cogent reasons.

Having considered the submissions made before me and taking into consideration overall facts and circumstances of the case, I do not find any illegality or irregularity in the exercise of jurisdiction vested in the Court while rejecting the application moved under Sec.319 of the Cr.P.C. which may require interference by this Court in its revisional jurisdiction.

In view of above discussion, the revision petition has no merit and the same is hereby dismissed. The record of the case be sent forthwith.

(SATYA PRAKASH PATHAK)J.

vij